

STATE OF INDIANA)
COUNTY OF HAMILTON) ss: IN THE HAMILTON CIRCUIT/SUPERIOR COURT
CAUSE NO.. 29C01-0311PL1365

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
TERRY CHOATE,)
individually and doing business as)
ALL CITY METAL CRAFT, INC., and)
ALL CITY METAL CRAFT, INC.)
)
Defendants.)

COMPLAINT FOR INJUNCTION, RESTITUTION, CIVIL PENALTIES, AND COSTS

The State of Indiana, by Attorney General Steve Carter, and Deputy Attorney General Terry Tolliver, in accordance with Rule 3 of the Indiana Rules of Trial Procedure, petitions the court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-1, *et seq.*, for injunctive relief, consumer restitution, civil penalties, investigative costs, and other relief

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c) and Ind. Code §24-5-11-14.
2. The Defendant, Terry Choate, at all times relevant to this complaint **was** owner of and did business as All City Metal Craft ("All City"), with a principal place of business located in Marion County at 1246 Deloss Street, Indianapolis, Indiana, 46203.
3. The Defendant, All City Metal Craft, Inc., was an Indiana Corporation, with a principal place of business located in Marion County at 1246 Deloss Street, Indianapolis, Indiana, 46203. On or about October 11, 2001, the Indiana Secretary of State administratively

dissolved the corporation. Upon information and belief, Defendant Choate was an officer of the Defendant All City Metal Craft, Inc.

4. At all relevant times, the Defendants were engaged in or solicited home improvement contracts with residents of Hamilton County,

FACTS

5. At least since November 21, 1997, the Defendants have acted as home improvement suppliers by engaging in or soliciting home improvement contracts.

6. On or about June 11, 2002, the State of Indiana issued a warning letter to the Defendants advising them of the Indiana Home Improvement Contracts Act and the contract deficiencies that needed to be corrected. Specifically, the letter stated that the Defendants' failed to include the following information in their contracts:

- (a) failed to state the telephone number of the consumer and the names of any agent to whom consumer problems and inquiries can be directed; Ind. Code §24-5-11-10(a)(2).
- (b) failed to state the date the home improvement contract was submitted to the consumer, contrary to Ind. Code §24-5-11-10(a)(3);
- (c) failed to state the approximate starting and completion dates of the home improvement, contrary to Ind. Code §24-5-11-10(a)(6);
- (d) failed to state any contingencies that would materially change the approximate completion date, contrary to Ind. Code §24-5-11-10(a)(7); and
- (e) failed to include a legible printed or a typed version of the consumer and supplier's name placed directly after or below the signature, contrary to Ind. Code §24-5-11-10(a)(9).

7. On or around September 7, 2002, Terry Choate, acting on behalf of the Defendants, entered into a home improvement contract with Charles Simpson ("Simpson") at Simpson's Hamilton County home. In the contract, the Defendants falsely represented that they would install an ornamental iron fence around the perimeter of Simpson's back yard and a ten-foot gate at Simpson's home at a price of Six Thousand One Hundred Twenty-Seven Dollars and

Fifty Cents (\$6,127.50). Simpson paid Two Thousand Five Hundred Dollars (\$2,500.00) to the Defendants as a down payment. A true and accurate copy of the contract is attached, incorporated by reference, and marked Exhibit "A."

8. The Defendants failed to provide a completed home improvement contract to Simpson before Simpson signed the contract.

9. The Defendants failed to include the following information in the home improvement contract entered into with Simpson:

- (a) the names of any agent to whom consumer problems and inquiries can be directed;
- (b) the date the home improvement contract was submitted to the consumer;
- (c) any time limitation on the consumer's acceptance of the home improvement contract;
- (d) approximate starting and completion dates of the home improvements;
- (e) statement of any contingencies that would materially change the approximate completion date;
- (f) the home improvement contract price;
- (g) a legible printed or typed version of consumer and supplier's name placed directly after or below the signature;
- (h) a statement of any contingencies that would materially change the approximate completion date.

10. At the time the home improvement contract was entered into, the Defendants falsely represented in the **Simpson** contract that all work would be completed "4 wks from start." It is presumed from this representation that the Defendants would begin and complete the work within a reasonable period of time.

11. While the Defendants did start the contracted work, the Defendants have failed to stay in contact with **Simpson** to advise him of their progress. Furthermore, although the Defendants have stated to **Simpson** that they would finish the work, they have yet to either return to complete the work, or to issue a refund to **Simpson**.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

12. The transaction referred to in paragraph 7 is a home improvement contract as defined by Ind. Code §24-5-11-4.

13. The Defendants are home improvement suppliers as defined by Ind. Code §24-5-11-6.

14. By failing to provide completed home improvement contract to **Simpson** before the consumer signed the contract, Defendant violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-10.

15. By failing to include the information referred to in paragraph 9 in the home improvement contract entered into with **Simpson**, Defendant violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-10.

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

16. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs I through 15 above.

17. The transaction referred to in paragraph 4 above is a "consumer transaction" as defined by Ind. Code §24-5-0.5-2(a)(1).

18. The Defendants are "suppliers" as defined by Ind. Code §24-5-0.5-2(a)(3).

19. The violations of the Indiana Home Improvement Contracts Act referred to in paragraph 9 constitute deceptive acts.

20. By representing to Simpson that the home improvement work would be completed within a specified or a reasonable period of time as set forth in paragraph 10, when the Defendants knew or should have known the work would not be completed, the Defendants violated Ind. Code §24-5-0.5-3(a)(10).

21. The misrepresentations and deceptive acts set forth above will continue and will cause irreparable injury, unless the Defendants are enjoined from engaging in further conduct that violates Ind. Code §24-5-11-1 *et seq.* and Ind. Code 624-5-0.5-1, *et seq.*

**COUNT III - KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

22. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 21 above.

23. The misrepresentation and deceptive act set forth in paragraph 9 was knowingly committed by the Defendants to deceive **Simpson**.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Terry Choate, individually and doing business as All City Metal Craft, and All City Metal Craft, Inc., for a permanent injunction enjoining the Defendants from:

- a. in the course of entering into home improvement transactions, failing to provide to the consumer a completed home improvement contract which includes at a minimum the following:
- (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
 - (2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
 - (3) The date the home improvement contract **was** submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
 - (4) A reasonably detailed description of the proposed home improvements;
 - (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
 - (6) The approximate starting and completion date of the home improvements;
 - (7) A statement of any contingencies that would materially change the approximate completion date;
 - (8) The home improvement contract price; and

- (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;
 - c. representing, expressly or by implication, that the home improvement contracts entered into by the Defendants have sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which the Defendants know or should reasonably know they do not have; and
 - d. representing, expressly or by implication, that the Defendants are able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when the Defendants know or should reasonably know they cannot.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants, Terry Choate, individually and doing business as All City Metal Craft, and All City Metal Craft, Inc., for the following relief:

- a. cancellation of the Defendants' contracts pursuant to Ind. Code §24-5-0.5-4(d);
- b. consumer restitution for Charles Simpson pursuant to Ind. Code §24-5-0.5-4(c)(2) in an amount to be determined at trial;

- c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count III of the Plaintiffs Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;
- e. on Count III of the Plaintiffs Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

Steve Carter
Indiana Attorney General
Atty. No. 4150-64

By:



Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

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ALL CITY METAL CRAFT

121 West Summer Indianapolis, IN 46217
(317) 782-9340

Contract

Charles Simpson

Job #:
Work #:
Home #:
Fax #:
TWP/CO:

Height	Footage	Style	Color
48"	206	2 Panel by 10's	BLK

Diagram

731

Panel Size 2x48" Plain ☐ Biased ☐
 Size 1' CHAIR Plain ☐ Biased ☐
 Size 1/2 RD Number ☐
 Size ☐ Space ☐ Top ☐
 Punch ☒ Face ☐ Butt ☐
 Other ☐

Size	Spacing	Concrete	Poros	Flange

Size	Latch	Lock	Hinge
1 10' D.D.	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>

46' To Watchdog Erection Between
Pillars - 7 C.

Other Details:

Contract Amount \$ 6127.50
 Sales Tax \$
 Total \$
 Down Payment \$ 2500.00
 Balance Due \$ 3627.50

Prices quoted are null and void unless signed within 60 days of date of contract.

To be delivered or erected on or about
4 WKS FROM START
 from date of acceptance DELIVERY AND OR
 INSTALLATION TIME IS ESTIMATED
 AND NOT GUARANTEED.

ACCEPTANCE: As the Purchaser under this contract, I hereby agree to pay the contract amount set forth above for the materials and/or installation of the materials set forth in this contract. I also understand that this contract is a "Cash Sale Contract" for the work set forth above. Any changes or alterations resulting in additions or deletions will be priced accordingly as an increase or decrease to the original Contract and signed by both Purchaser and All City Metal Craft before the Change Order Work is completed. I also agree that the work and materials to be furnished under this Contract shall be installed at All City Metal Craft's convenience. I further acknowledge and state that I have read and understood this contract and that I accept the contract terms, conditions and Contract Amount set forth in this document.

ALL CITY METAL CRAFT

PURCHASER

EXHIBIT

03 2003 06:10PM P1

PHONE NO. :

FROM : Panasonic FAX SYSTEM